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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951.

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation, Petitioner, v. WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, Respondent.	No. 286.
STATE OF MISSOURI ex rel. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation, Petitioner, v. DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, Respondent.	No. 287.

BRIEF

In Opposition to Petition for Writs of Certiorari.

STATEMENT.

While there is room for controversy about petitioners' statement as to what this Court held and ruled in its earlier opinion in these cases,[1] we decline to enter into any controversy about that matter at this time, and accept petitioners' "Summary Statement of the Cases" as being substantially correct.

1 Missouri ex rel. Southern Railway Co. v. Mayfield, 340 U. S. 1.

Likewise, we concede that this Court has jurisdiction to review by certiorari the latest decision of the Supreme Court of Missouri in these cases,[2] for the purpose of determining whether that State court has in that decision carried out the mandate of this Court under its earlier opinion in these cases.

However, we do say that there is no sound ground for such review here, because petitioners' petitions for writ of certiorari are predicated upon a wholly false premise in their assertion that the Supreme Court of Missouri, in its latest decision in these cases, does not reveal that Missouri has any policy rejecting the availability of the doctrine of forum non conveniens in Federal Employers' Liability Act cases.

SUMMARY OF ARGUMENT.

1. The Supreme Court of Missouri, in its opinion and decision under the mandate of this Court, clearly and unequivocally ruled that it is the policy of Missouri to reject the doctrine of forum non conveniens in all cases, specifically including cases under the Federal Employers' Liability Act.

State ex rel. Southern Ry. Co. v. Mayfield, ... Mo. ...., 240 S. W. 2d 106.

2. The latest opinion and decision of the Supreme Court of Missouri is in specific compliance with the mandate of this Court under its opinion and decision in these cases.

State ex rel. Southern Ry. Co. v. Mayfield, ... Mo. ...., 240 S. W. 2d 106;

Missouri ex rel. Southern Ry. Co. v. Mayfield, 340 U. S. 1.

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2 State ex rel. Southern Ry. Co. v. Mayfield, ... Mo. ...., 240 S. W. 2d 106.

ARGUMENT.

The Supreme Court of Missouri, in its opinion and decision of which petitioners now seek review by this Court, clearly and unequivocally said (R. 87; 240 S. W. 2d, l. c. 108):

> "The policy of this state has been to bar none of its citizens from its courts where there is proper venue and jurisdiction of the parties and subject-matter, and this applies to citizens who are residents as well as non-residents."

By this pronouncement, the Missouri court has necessarily and unqualifiedly ruled that, under the policy of Missouri, the doctrine of forum non conveniens is rejected in that State in all cases.

The Missouri court then went on to rule, further, that (R. 89; 240 S. W. 2d, l. c. 109):

> "Since the policy of this state has been, and is, to allow citizens of Missouri (resident and non-resident) to bring and maintain suits under the Federal Employers' Liability Act in the courts of this state, we cannot bar citizens of other states from doing likewise."

By this pronouncement, the Missouri court has necessarily and unqualifiedly ruled that, because of the policy of Missouri to reject the doctrine of forum non conveniens in all cases, the doctrine is rejected in that State as to actions under the Federal Employers' Liability Act.

Clearly, by these rulings, the Missouri court has proceeded consistently with the opinion of this Court in these cases promulgated November 6, 1950. In that opinion this Court said (340 U. S., l. c. 3):

> "A decision by the highest court of a State determining that the doctrine of *forum non conveniens*

cannot bar an action based on the Federal Employers' Liability Act, in the circumstances before us, may rest on one of three theories. (1) According to its own notions of procedural policy, a State may reject as it may accept the doctrine for all causes of action begun in its courts. If denial of a motion to dismiss an action under the Federal Employers' Liability Act is rested on such a general local practice, no federal issue comes into play. (It is assumed of course that the State has acquired jurisdiction over the defendant.)"

In the light of these quotations from the latest opinion and decision of the Missouri court, and the opinion and decision of this Court, there is, we submit, no room for any contention that the Missouri court's latest decision is predicated upon anything other than the local law of that State, or that such decision does not conform to this Court's suggestion—or, "requirement," if it is to be termed such—that (340 U. S., l. c. 5):

"Therefore, if the Supreme Court of Missouri held as it did because it felt under compulsion of federal law as enunciated by this Court so to hold, it should be relieved of that compulsion. It should be freed to decide the availability of the principle of *forum non conveniens* in these suits according to its own local law. To that end we vacate the judgment of the Supreme Court of Missouri and remand the cause to that Court for further proceedings not inconsistent with this opinion."

Petitioners' contention that the latest opinion and decision of the Missouri court is not in harmony with the mandate of this Court in these cases, rests upon petitioners' confusion of the language in the two opinions which have been rendered by the Missouri court. On pages 22 and 23 of their brief in support of their petition here,

petitioners have set out excerpts from the latest opinion of the Missouri court, which contain quotations from the earlier opinion of the Missouri court, but, in so doing, petitioners have placed those excerpts in juxtaposition, without indication that other parts of the text have been omitted. The result is misleading and highly confusing, even to petitioners, for they have excluded from their quotations the highly pertinent statement that (R. 86; 240 S. W. 2d, l. c. 108):

> "In other words, there is nothing in the Federal law that compels Missouri to open its courts to cases arising under the Federal Employers' Liability Act, Douglas v. New York, New Haven & Hartford R. Co., 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, **but if it does so, the same rights must be accorded to citizens of other states as are given to citizens of this State.**" (Emphasis supplied.)

which is in strict accord with the statement of this Court that (340 U. S., l. c. 3-4):

> "By reason of the Privileges-and-Immunities Clause of the Constitution, a State may not discriminate against citizens of sister States. Art. IV, § 2. Therefore **Missouri cannot allow suits by non-resident Missourians for liability under the Federal Employers' Liability Act arising out of conduct outside that State and discriminatorily deny access to its courts to a non-resident who is a citizen of another State.** But if a State chooses to '(prefer) residents in access to often over-crowded courts' and to deny such access to all non-residents, whether its own citizens or those of other States, it is a choice within its own control. This is true also of actions for personal injuries under the Employers' Liability Act. *Douglas v. New Haven R. Co.*, 279 U. S. 377, 387. Whether a State makes such a choice is, like its acceptance or rejection of the

doctrine of *forum non conveniens*, a question of State law not open to review here." (Bold face emphasis supplied.)

CONCLUSION.

We submit there is no reasonable basis for any contention that the latest opinion and decision of the Missouri court in these cases is not in harmony with the mandate of this Court. Review of the latest decision of the Missouri court in these cases can serve no purpose except to delay further a trial of the actions out of which these consolidated mandamus proceedings arise—which actions have been pending in the courts without coming to trial for almost three years, and involve injuries sustained almost five years ago in one of the cases, and over three and one-half years ago in the other case.

It is accordingly submitted that petitioners' petitions for writ of certiorari should be denied.

Respectfully submitted,

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SEP 21 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

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v.

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REPLY BRIEF OF PETITIONERS.

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REPLY BRIEF OF PETITIONERS.

The discussion in this reply brief will be confined to the single question whether the Missouri court held that Missouri has a policy rejecting the availability of the doctrine of *forum non conveniens* in Federal Employers' Liability Act cases, which is the only question discussed in the brief for respondents in opposition to the petition.

Brief in Opposition to the Petition Completely Fails to Join Issue on the Pivotal Question Raised in the Petition.

The pivotal question posed by the petition is whether the writs of mandamus in these cases were quashed by the application of an irrelevant Federal constitutional principle which required Missouri to make its courts available in Federal Employers' Liability Act cases to citizens of Missouri and citizens of other states alike, or whether the Missouri Court held that the writs of mandamus should be quashed because Missouri has a policy rejecting the availability of the doctrine of *forum non conveniens* in such cases.

Counsel for respondents, by their brief in opposition to the petition, do not even venture the effort to meet the pivotal issue in these cases, with the result that the brief in opposition is as irresponsive to the brief in support of the petition as the decision and opinion of the Supreme Court of Missouri in these cases was irrelevant to the issues before that court.

Like the opinion of the Missouri court, the sum and substance of the brief for the respondents consists of an assertion that Missouri has a policy making its courts available in Federal Employers' Liability Act cases to citizens of Missouri and to citizens of other states on a basis of equality. We have never questioned the existence of such a policy in Missouri. It was readily and repeatedly conceded throughout the brief in support of the petition that it has been and is the policy of Missouri to allow citizens of Missouri to bring and maintain suits under Federal Employers' Liability Act in the courts of that State, and that to deny the same privilege to citizens of other states would violate Article IV, Section 2, of the Constitution of the United States, but such a policy which was announced in the *Chambers*[1] and *Grimm*[2] cases, in keeping with the Federal constitutional policy requiring Missouri to make its

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[1] *Chambers* v. *Baltimore & Ohio R. Co.*, 207 U. S. 142.

[2] *State, ex rel. Mutual Pacific Life Ins. Co.* v. *Grimm*, 239 Mo. 135, 143 S. W. 483.

courts available to citizens and noncitizens alike, has no relevancy whatsoever to a policy rejecting the availability of the doctrine of *forum non conveniens* in Federal Employers' Liability Act suits. Like the Missouri court's opinion, the brief for respondents does not touch the issue in these cases, whether the principle of *forum non conveniens* is available in Missouri.

In our point III, discussion of which begins on page 40 of brief in support of petition, we said:

> "The Missouri Court Erroneously Applied Principles of Federal Constitutional Limitations on the Right of States to Decline to Accept Jurisdiction in F.E.L.A. Cases When, in Fact, Missouri Has Already Accepted Jurisdiction of the Parties and Subject Matter in These Cases, With the Result That the Decision of the Missouri Court, Quashing the Writs of Mandamus, Turned Upon Irrelevant Federal Constitutional Principles Governing the Availability of State Courts, and not Upon the Existence of Missouri Policy With Respect to Availability of the Doctrine of Forum Non Conveniens."

The soundness of the conclusion thus summed up in our point III is not even questioned in the brief in opposition to the petition, and it is respectfully submitted that it would have been impossible for counsel for respondents to have submitted a tenable argument against the contention that the Missouri court erroneously decided the academic question of the right of the plaintiffs in these actions to enter the courts of Missouri, rather than the question of the power of the Missouri court to relinquish jurisdiction of the cases under the doctrine of *forum non conveniens*.

We iterate the assertion that the decision of the Missouri court in these cases rested solely upon the irrelevant principle enounced by this Court in the *Chambers* case and by the Missouri court in the *Grimm* case, which concerned the availability of courts, and not the availability of the doctrine of *forum non conveniens*, and that, there-

fore, the mandate of this Court has not been carried out.

It is respectfully submitted that the statement in the conclusion of the brief for respondents that the injuries for which these suits were brought occurred more than three years ago has no proper place in these cases. This Court is concerned with the merits of the legal question of the availability of the doctrine of *forum non conveniens* in Missouri for Federal Employers' Liability Act cases, which was raised immediately after these suits were instituted, and it is not concerned with any delay to the plaintiffs, in obtaining any relief to which they may be ultimately entitled, occasioned by the trial of the preliminary question of the availability of the doctrine of *forum non conveniens*.

Conclusion.

It is respectfully submitted that the brief for respondents in opposition to the petition does not touch the issues presented in the petition, and we renew our prayer for the granting of the petition to the end that the important questions presented in these cases be determined.

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